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OLIFF & BERRIDGE, PLC
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In re Application of :
FLEURY, Sylvain et al. :
Application No.: 10/573,704 :
PCT No.: PCT/IB04/02433 : DECISION ON
Int. Filing Date: 29 July 2004 :
Priority Date: 30 July 2003 : PETITION
Attorney's Docket No.: 122481 :
For: New Soluble And Stabilized Trimeric Form Of GP41 : UNDER 37 CFR 1.47(a)
Polypeptides :
:

This is in response to the petition under 37 CFR 1.47(a), filed 27 February 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Pierre-Francois Serres. The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 29 July 2004, applicants filed international application PCT/IB04/02433, claiming a priority date of 30 July 2003. The thirty-month deadline for paying the basic national fee in the United States expired at midnight on 30 January 2006.

On 27 March 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee and a petition to revive the instant application under 37 CFR 1.137(b).

On 17 April 2006, the Office mailed the "Decision on Petition For Revival of Abandoned Application Under 37 CFR 1.137(b)," granting applicants' request to revive the instant application.

On 31 August 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that, an oath or declaration and a surcharge for filing the oath and declaration later than 30 months from the priority date, must be filed. The notification set a two-month time limit in which to respond.

On 27 February 2007 applicant filed the present petition accompanied, *inter alia*, by a petition fee, a four-month extension fee, an oath executed by inventors Sylvain Fleury, Marc Girard, Marie-Gaelle Roger and Nicolas Mouz and, a declaration by Mr. Christian Rochet.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor, and (4) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

As to items (1) and (2), applicants have submitted the correct fee of \$200.00 under 37 CFR 1.17(g) and a statement of the last known address of the non-signing inventor.

With regard to item (3), applicants have filed a declaration executed by the other cooperating inventors and containing an unsigned signature block for the non-signing inventor. This declaration complies with 37 CFR 1.497(a)-(b) and is accepted. Hence, item (3) is satisfied.

With regard to item (4), the evidence submitted to show that inventor Pierre-Francois Serres has refused to sign is insufficient. The declaration of Mr. Christian Rochet does not appear to indicate that non-signing inventor Pierre-Francois Serres has been presented with a copy of the application papers, including the claims. Although the evidence submitted shows that non-signing inventor Pierre-Francois Serres has certain grievances against his former employer (see copy of July 24, 2006 response letter from non-signing inventor Pierre-Francois Serres to Fradin, Tronel, Sassard & Associates), the evidence does not indicate that non-signing inventor Pierre-Francois Serres was presented with a complete copy of the application, including the claims. Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the non-signing inventor for signature. Copies of documentary evidence such as a certified mail return receipt, cover letter of instructions, telegrams, etc., which support a finding that a complete copy of the application papers had been sent to the applicant should be made a part of the declaration or affidavit.

CONCLUSION

Applicant's petition to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Pierre-Francois Serres, is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (571) 272-3297
Facsimile: (571) 273-0459



Stefan Staicovici
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (571) 272-1208